BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

MICHAEL S. JACKSON Claimant	
VS.	Docket No. 199,067
JAS CONSTRUCTION COMPANY Respondent	Docket No. 199,007
AND	
GRANITE STATE INSURANCE COMPANY Insurance Carrier	

<u>ORDER</u>

Respondent appeals from a June 13, 1995 Preliminary Hearing Order entered by Administrative Law Judge Alvin E. Witwer.

ISSUES

Respondent contends the Administrative Law Judge exceeded his jurisdiction by entering the Order because it was not established that claimant suffered accidental injury or that claimant's injury arose out of and in the course of his employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds the Order of the Administrative Law Judge should be affirmed.

Claimant testified that he injured his back on February 20, 1995 when he fell off a ladder while attempting to deliver a piece of plywood to the second floor of a residential structure on which his crew was working. Although claimant completed the day's work, by that evening the pain was severe enough that he sought medical treatment at the emergency room of a local hospital. Respondent presented the testimony of Mr. James Swanson which, in part, contradicted the claimant's testimony. Mr. Swanson stated claimant did tell him of the accident at work; testified that it would be extremely unusual for a laborer to take plywood up to the second story on a ladder; testified that he could not find anyone who had seen the claimant's fall; testified that claimant wore a back brace and that he had told him before the injury that he had a back problem.

IT IS SO ORDERED.

The decision turns largely on credibility of the claimant. Taking into consideration the opportunity by the Administrative Law Judge to observe the demeanor of the witnesses, the Appeals Board finds claimant has, for preliminary hearing purposes, established accidental injury arising out of and in the course of his employment. The Order of the Administrative Law Judge should be affirmed.

WHEREFORE, the Order of the Administrative Law Judge Alvin E. Witwer dated June 13, 1995 should be, and the same is hereby, affirmed.

Dated this day of Se	eptember 1995.
	BOARD MEMBER
	BOARD MEMBER
	BOARD MEMBER

c: Derek R. Chappell, Ottawa, KS John B. Rathmel, Overland Park, KS Alvin E. Witwer, Administrative Law Judge Philip S. Harness, Director